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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

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4 IN RE: TERRORIST ATTACKS ON SEPTEMBER 11, 2001

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6 03 MD 1570 (GBD) (SN)

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7
8 New York, N.Y.
9 September 7, 2017
3:30 p.m.

10 Before:

11 HON. SARAH NETBURN,

12 U.S. Magistrate Judge

13 APPEARANCES

14 SIMMONS HANLY CONROY
Attorneys for the Burnett plaintiffs
15 BY: ANDREA BIERSTEIN

16 KREINDLER & KREINDLER
Attorneys for the Ashton plaintiffs
17 BY: ANDREW J. MAHONEY
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18 COZEN O'CONNOR
Attorneys for Federal Insurance plaintiffs
19 BY: SEAN P. CARTER

20 MOTLEY RICE
Attorneys for the Burnett plaintiffs
21 BY: ROBERT T. HAEFELE

22 ANDERSON KILL
Attorneys for the O'Neill plaintiffs and putative class
23 BY: BRUCE STRONG
24 ETHAN W. MIDDLEBROOKS

APPEARANCES
(Continued)

JONES DAY

Attorneys for Defendant Dubai Islamic Bank

BY: STEVEN T. COTTREAU

BERNABEI & KABAT, PLLC

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BY: ROBERT K. KRY

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Attorneys for Defendant Yassin Kadi

BY: AMY ROTHSTEIN

PETER C. SALERNO

1 (Case called)

2 THE COURT: Good afternoon.

3 MS. BIERSTEIN: Good afternoon, your Honor. Andrea
4 Bierstein, Simmons Hanly Conroy, for the Burnett plaintiffs in
5 the PEC.

6 MR. MAHONEY: Good afternoon, your Honor. Andrew
7 Mahoney for the Ashton plaintiffs in the PEC.

8 MR. CARTER: Good afternoon, your Honor. Sean Carter
9 from Cozen O'Connor for the federal plaintiffs.

10 MR. HAEFELE: Good afternoon, your Honor. Robert
11 Haeefele from Motley Rice here for the Burnett plaintiffs in the
12 PEC.

13 MR. KREINDLER: Good afternoon, your Honor. Jim
14 Kriendler, Kriendler & Kreindler, for the Ashton plaintiffs and
15 the Plaintiffs' Committee.

16 MR. COTTREAU: Good afternoon, your Honor. Steve
17 Cottreau, Jones Day, on behalf of the Dubai Islamic bank.

18 MR. KABAT: Good afternoon, your Honor. Alan Kabat
19 from Bernabei & Kabat for Dr. Al-Turki et al.

20 MR. NASSAR: Good afternoon, your Honor. Waleed
21 Nassar from Lewis Baach on behalf of the Muslim World League
22 and the International Islamic Relief Organization.

23 MR. KRY: Good afternoon, your Honor. Robert Kry from
24 MoloLamken for Dallah Avco.

25 MS. ROTHSTEIN: Good afternoon, your Honor. Amy

1 Rothstein from Salerno & Rothstein for Yassin Kadi.

2 MR. SALERNO: Good afternoon, your Honor. Peter
3 Salerno, Salerno & Rothstein, for Yassin Kadi.

4 THE COURT: Yes.

5 MR. STRONG: Bruce Strong and Ethan Middlebrooks,
6 Anderson Kill, on behalf of the O'Neill plaintiffs, the
7 putative class, and the PEC.

8 THE COURT: Thank you. Good to see you all. I hope
9 everybody had a nice summer.

10 Let me tell you what I have on my agenda for today.
11 I may take things a little out of turn. I want to check in
12 on the status of discovery, make sure that I have all of the
13 relevant dates set, and make sure that you all have your
14 expectations set. I want to talk about the motions to compel,
15 which obviously is related to the status of discovery. Then I
16 want to talk about the deposition protocol, and I'm prepared to
17 rule on the disputed areas of that deposition protocol, but
18 more importantly, I want to talk about depositions.

19 The thing that was missing from the deposition
20 protocol, I can see that you all spent a lot of time and put a
21 lot of hard work in drafting that protocol, but in my view it
22 was missing some key information that I had expected to be in
23 there, namely when those depositions are going to take place
24 and how many are reasonably anticipated. I know in the
25 protocol there is a triggering date for beginning the

1 meet-and-confers between the parties, about how many
2 depositions are likely to be undertaken, and I am concerned
3 that that process would put us deep into next year before any
4 deposition is taken and I don't want that. I want to talk with
5 you all about a way to make sure that we are taking depositions
6 in this case in the spring of next year. I believe that that
7 is reasonable and appropriate, and I want to talk to you about
8 how to get that done. Then I have a few housekeeping matters.

9 Let me begin with the status of discovery as I
10 understand it. It is my understanding that with respect to the
11 jurisdictional defendants, paper discovery has been completed;
12 that with respect to all of the merits defendants, other than
13 the World Assembly of Muslim Youth and WAMY International,
14 paper discovery has been completed as well, obviously with the
15 asterisks about motions to compel.

16 I am expecting status letters from the parties on
17 September 29 for those defendants for whom paper discovery
18 should have been completed by now, and I am expecting a status
19 letter on the WAMY production on November 17. My hope is that
20 we will be teeing up motions to compel, if any, in that case
21 toward the end of this year.

22 There is also the motions to compel that have been
23 filed or that have been raised as possible in the status letter
24 that was recently filed in connection with the jurisdictional
25 defendants.

1 Who wants to speak from the plaintiff's side with
2 respect to that?

3 Mr. Carter?

4 MR. CARTER: Your Honor, I can address those issues.

5 As a general matter, I think all of the dates and
6 status, as your Honor ticked off, are accurate. There is one
7 issue ongoing with the plaintiffs and Dubai Islamic bank.

8 THE COURT: This courtroom is beautiful but has
9 terrible acoustics. Please use the microphone.

10 MR. COTTREAU: There is an ongoing dialogue between
11 the plaintiffs and counsel for Dubai Islamic Bank concerning a
12 universe of search terms that was the subject of a prior motion
13 to compel relative to which Judge Maas had issued an order, and
14 we had some disagreement about the proper understanding and
15 interpretation of that order. It's been an ongoing and
16 productive dialogue, and we have gotten it narrowed down to,
17 I think, a universe of 20 or so names that we are in dispute
18 about. We are trying to resolve that hopefully in the next
19 couple weeks. The hope is that we will resolve that and there
20 will be no motion practice related to that. That is our
21 aspiration at least.

22 THE COURT: With respect to Dubai Islamic Bank?

23 MR. CARTER: That's correct, your Honor.

24 THE COURT: That would cover all discovery disputes,
25 this ESI issue is the only one at this point?

1 MR. CARTER: I'm sorry, with regard to Dubai Islamic
2 Bank?

3 THE COURT: Yes.

4 MR. CARTER: Because we haven't gone through the
5 process of doing our full status report, I want to reserve. I
6 think there was also an issue as to whether or not they have
7 complied to Judge Maas' order to search for certain documents
8 relating to the 1998 Embassy bombings. I raised that with them
9 as well. Off the top of my head, there are a few issues that
10 we are trying to resolve.

11 THE COURT: That sounds promising. Hopefully when we
12 get that status letter on the 29th, those issues will be
13 narrowed. If they are not narrowed and if a motion is going to
14 be filed, I do want that be to filed soon after the status
15 letter. When I say "soon after," I mean certainly within
16 30 days after the status letter.

17 One of the housekeeping issues I want to mention is
18 the length of status letters. I don't need a full motion in
19 a status letter. That's the point of a status letter. You
20 should be prepared to file that motion soon afterwards. It may
21 be there are certain things I can resolve without additional
22 motion practice, or I can call the parties and we can have a
23 conference, but my hope is that we are going to tee up these
24 motions sooner rather than later.

25 MR. CARTER: Your Honor, with the Dubai Islamic Bank

1 motion to compel, I think that timeline is fine. With regard
2 to the Muslim World League, IIRO, and World Assembly of Muslim
3 Youth, as your Honor is aware, they were given extensions to
4 complete their productions and we are just working through
5 those. We have received literally hundreds of thousands of
6 documents within the last few months from those defendants, and
7 so I think we might be needing a bit longer after the
8 September 29 deadline to try and identify what the universe of
9 motions will be and to get those on file. We are dealing, in
10 certain of these cases, with productions that encompass a
11 million pages, and we think there is quite a bit missing. It
12 may be a bit of a more involved process in those cases.

13 THE COURT: Well, I'll get the status letter with
14 respect to that production as well on September 29.

15 MR. CARTER: You will, your Honor.

16 THE COURT: Hopefully we'll have some clarity there,
17 that will have been 45 days from the close of that discovery,
18 and obviously what was produced prior to that close deadline,
19 you should be reviewing on an ongoing basis. My hope is that
20 you'll have a pretty good handle by the 29th as to what remains
21 and where you think there is room for dispute.

22 With respect to each of the individual defendants,
23 I am comfortable individual conferences with the relevant
24 representatives from the Plaintiffs' Executive Committee and
25 the relevant lawyers so everybody doesn't need to be involved

1 to move those disputes through. But what I don't want to have
2 is a period of months of meet-and-confer, and then months to
3 prepare a motion, and all of a sudden it is June of 2018 and we
4 are not moving the case forward. I have a significant interest
5 in pushing this case forward at this point.

6 MR. CARTER: Your Honor, we share that, and I think in
7 those cases we have had numerous meet-and-confers along the way
8 and we are just at an impasse, ultimately.

9 THE COURT: That is what I'm here for.

10 So on the 29th, I'll get a letter with respect to the
11 Dubai Islamic Bank production and with respect to the Muslim
12 World League and International Islamic Relief Organization.
13 Hopefully we'll have a handle roughly on what has been
14 produced, what remains outstanding, and where to go from there.
15 Obviously, the same will go with respect to the WAMY documents,
16 though we're two months behind with respect to that.

17 Can we turn to the jurisdictional discovery. The
18 status letter that I received suggested that there had been
19 several orders that were issued by Judge Maas in 2015 and 2016,
20 and that there was a view that there had not been compliance
21 with those orders. Specifically I'm looking at the order from
22 Judge Mass related to Muslim World League and IIRO.

23 I understand that Judge Maas ordered a sworn
24 statement, a certification of the completeness of the
25 production, that a privilege log be produced, and I understand

1 that there is also, related to some of the individual
2 defendants, a question about passports, both personal passports
3 and governmental passports.

4 I'm not sure at this point a motion to compel is the
5 right motion to be filing. It seems to me a motion for
6 sanctions is the appropriate motion to be filing.

7 MR. CARTER: Your Honor, we wanted, obviously, to give
8 the defendants an opportunity to cure the problems, and that is
9 why we went into the level we did in the status report. I
10 think we agree, if they haven't complied, that's the
11 appropriate recourse.

12 THE COURT: Counsel, is there an intention to comply
13 any further with Judge Maas' orders?

14 MR. KABAT: With respect to the individual
15 defendants --

16 THE COURT: I'm sorry. Put the microphone to you as
17 well.

18 MR. KABAT: With respect to the individual defendants,
19 we had to wait until the World League completed the production
20 with them to be able to certify that all documents had been
21 produced and abeyances are involved and so forth, and that
22 production was completed two weeks ago. We submitted the
23 certification to our client for their review, and we hope to
24 have them sign within a week or two, certainly by the end of
25 the month.

1 THE COURT: The certification will be provided in the
2 next two weeks.

3 What about with respect to passports? My
4 understanding is that there was a response to one of the
5 discovery demands that the officials were traveling primarily
6 on official passports which were not in their possession.

7 I don't understand why your clients can't obtain
8 a certified copy of their passports from the relevant
9 government entity in order to produce that, and then there is
10 also a question about any personal passports that they may have
11 and travel on.

12 MR. KABAT: Our client inquired about that, and we
13 have not been successful so far. We will keep on working on
14 it. I'm sorry.

15 THE COURT: The alternative, as I mentioned, I don't
16 think a motion to compel the production is the right posture at
17 this point. You've been ordered to produce these documents.
18 You failed to do so.

19 What I am going to do is set a deadline for the
20 sanctions motion. I'll give you time to have one last
21 opportunity to cure, to produce these documents, but if they
22 can't be, if they aren't produced within the next 30 days, I
23 am going to invite a sanctions motion from the Plaintiffs'
24 Executive Committee.

25 Today is September 7. Why don't we set Friday, the

1 6th of October, as a deadline for any sanctions motion with
2 respect to those individual defendants. Is two weeks enough
3 time to respond to that motion?

4 Any opposition to that motion will be filed on
5 October 20, and if the Plaintiffs' Executive Committee wants to
6 file a reply, that will be filed October 27.

7 Who is here on behalf of Mr. Al-Buthe?

8 MR. KABAT: I am.

9 THE COURT: You as well?

10 Same question. I think there's been some productions
11 and certifications that Judge Maas previously ordered.

12 MR. KABAT: We should be able to have the
13 certification within a week or two, or certainly by the end of
14 the month, and I am going to have to review the rest of the
15 documents they claim we haven't produced to double-check again
16 what we have. It may be that he simply does not have those
17 documents. I need to double-check with our client on that.

18 THE COURT: OK. If you can continue the
19 meet-and-confer with respect to all those individuals,
20 hopefully there will be a cure and the appropriate
21 certifications will be provided. To the extent your clients
22 are withholding any documents on privilege grounds, that needs
23 to be produced, a privilege log needs to be produced, I
24 understand that hasn't been produced yet, and obviously
25 certified copies of both the official passport and any personal

1 passport that would be in your clients' possession, that needs
2 to be produced. Your time to cure is up until October 6, at
3 which time the sanctions motion will be filed.

4 MR. KABAT: I would just note that Mr. Al-Buthe has
5 already submitted his passport. That is not an issue for him.

6 THE COURT: Terrific. Thank you.

7 Any issues with respect to obviously Dallah Avco, we
8 already addressed motions to compel. I interpret the letter to
9 say there is nothing further that the Executive Committee is
10 seeking. With respect to Mr. Jelaidan, I understand we are
11 trying to get the OFAC license issue squared away. I don't
12 think there is anything for the court to do on that defendant.

13 MR. CARTER: Your Honor, there were two issues.

14 With regard to Dallah Avco, we thought there was some
15 ambiguity in the letter we received from Mr. Kry about the
16 scope of the search, for meetings within Dallah Avco about the
17 September 11 investigation pursuant to your Honor's order.

18 I spoke to Mr. Kry. It sounds as though from his
19 explanation to me that they have searched for all potential
20 meetings, but we are just asking for clarification of that in
21 writing.

22 THE COURT: Can you provide that?

23 MR. KRY: I'll raise that with my client and provide
24 the appropriate clarification.

25 THE COURT: If you can get that done in the next two

1 weeks, that would be terrific.

2 MR. CARTER: Your Honor, with Mr. Jelaidan, we
3 mentioned in the letter that one of the communications to OFAC
4 included, as attachments to OFAC, two bank records relating to
5 accounts that were held by Mr. Jelaidan. We understand that
6 they were seeking release of funds from those banks. One of
7 the long-running issues that we have had relative to which
8 Judge Maas issued a number of orders was that Mr. Jelaidan had
9 not produced his banking records, claimed that he was unable to
10 get them. Judge Mass ultimately ruled that he was able to get
11 them, had not undertaken steps, and needed to do so.

12 The communication to OFAC suggests the existence of
13 banking records that we have never been provided. It is hard
14 for us to tell because they weren't provided. Informally we
15 ask that we be able to see those to make sure they are not new
16 documents that have never been then produced, but we haven't
17 gotten a response.

18 THE COURT: Who is here on behalf of Mr. Jelaidan?
19 Anyone?

20 There is a lawyer on this case. He writes me letters
21 every 30 days.

22 MR. CARTER: Mr. McMahon is counsel to Mr. Jelaidan.

23 THE COURT: Anyone from the Defendants' Executive
24 Committee know whether he had intended to come to this
25 conference?

1 MR. KRY: Your Honor, it is my understanding that he
2 was not able to attend today.

3 THE COURT: I think what I will do is issue an order
4 directing the parties to continue that meet-and-confer, and I
5 am going to set the October 6 deadline for the sanctions motion
6 with respect to the various individual charity officers as a
7 deadline for you to file any motion before me with respect to
8 those bank records.

9 MR. CARTER: Thank you, your Honor.

10 THE COURT: In addition, there was a submission by
11 Mr. Kadi addressing issues with respect to the plaintiffs'
12 production in response to discovery demands. Obviously the
13 Plaintiffs' Executive Committee also raised issues with respect
14 to Mr. Kadi's production.

15 Who wants to tell me where we are on this issue?

16 MR. MAHONEY: Andrew Mahoney, your Honor.

17 I spoke to Mr. Salerno over the last several days,
18 including today. We have substantially narrowed a lot of the
19 issues. Some of them are more ministerial. I am not prepared
20 to say that we anticipate motion practice, but there was an
21 extensive privilege log that was given to us that I want to
22 discuss with Mr. Salerno in the next week or two to see whether
23 or not we will make a motion regarding some of the documents he
24 has identified there. He has represented that he has produced
25 everything. We will get that certified, but I think we have

1 come a long way in narrowing the issues even since the status
2 letter to the court.

3 THE COURT: Terrific. Is that narrowing issues that
4 both sides raised?

5 MR. MAHONEY: I think so. There was a question about
6 interrogatories that they raised. We believe they are
7 contention interrogatories that are tabled for the time being.
8 There is a little bit of a disagreement about that, and I don't
9 know if Mr. Salerno wants to speak to that today or table that
10 for a later time.

11 I think that was an area we did not agree on. But
12 beyond that, I think there was some issue with regard to
13 identifying which of the plaintiffs' production were specific
14 to Mr. Kadi. Some of that has already taken place and some of
15 that will take place in the next week or two. Mr. Kadi is
16 actually handling some of that. He recently got new documents,
17 I think only a small number of which will pertain to Mr. Kadi.
18 They are interested in getting that. We agreed to do that.

19 THE COURT: Mr. Salerno, anything to add?

20 MR. SALERNO: Just, your Honor, with respect to
21 interrogatories. We don't want to go to motions to compel and
22 pressing the court on that issue if the court feels this is not
23 the right time.

24 We disagree with the plaintiffs that there was any
25 tabling of interrogatories that is applicable now. The tabling

1 was years ago. At some point, tabling ceases. But if now is
2 not the right time from the court's point of view, we don't
3 want to press it. We do want answers to the interrogatories,
4 because after having produced voluminous amounts of discovery
5 post remand and getting voluminous amounts of discovery from
6 the plaintiffs, we would like to know what claims now the
7 plaintiffs see against our client for us to respond to, and all
8 we have is pleadings that predate the decisions on our motion
9 to dismiss. Interrogatory answers would be helpful, but if the
10 court feels that this is not the right time, as I said, we
11 don't want to burden the court with unnecessary motions either.

12 THE COURT: I haven't reviewed the specific
13 interrogatories to rule one way or another whether or not they
14 are contention interrogatories or close to contention
15 interrogatories.

16 Typically my practice is to have some depositions go
17 forward before contention interrogatories are propounded. I
18 don't know, because I haven't seen these interrogatories,
19 whether or not in this instance that makes the most sense. I
20 certainly understand your position that you need some clarity
21 as to what exactly is being alleged.

22 I am not prepared to rule one way or the other as to
23 whether they are sort of back on the table or off the table or
24 where they stand. Without having reviewed them, I can tell you
25 that my practice generally is that I think it is more

1 productive to have depositions go forward and then propound
2 those interrogatories at the conclusion of that.

3 I guess at this point I have to leave it to you
4 whether or not you want to raise the issue with me, given the
5 little you now know about my practice, and decide whether or
6 not I should review the interrogatories and make a specific
7 ruling.

8 MR. SALERNO: We will confer among ourselves about
9 that and with the plaintiffs and see if we can make progress
10 and maybe reach an appropriate conclusion on that.

11 THE COURT: Can we set the same October 6 deadline?

12 I think I am going to set the same October 6 deadline
13 for motion practice on this particular schedule as well. That
14 gives you all a month to continue the conversation, and if you
15 decide that you want to press the issue of interrogatories or
16 something else, it should be in a motion filed on October 6.

17 MR. SALERNO: Your Honor, could we have one more week?
18 Only because we have a vacation planned and it is already
19 bought and paid for a week in late September.

20 THE COURT: Sure. Everything will get shifted a week.

21 Instead, that particular motion with respect to Kadi
22 would be filed on October 13, with opposition papers filed on
23 October 27, and any reply brief filed on November 3.

24 MR. SALERNO: The only other issue we have with the
25 plaintiffs, your Honor, it is the reciprocal of the issues that

1 they have with us, but we have completed our document
2 discovery. They have told us informally that they had
3 completed their document discovery, that they are not
4 withholding anything pursuant to any objection under privilege.

5 They have now told us informally that there are no
6 documents to go on a privilege log, keeping in mind that there
7 was a temporal deadline set for privilege logs, temporal
8 cutoff. The documents that are privileged postdating 9/11 need
9 not be logged.

10 We filed a privilege log, the one that Mr. Mahoney
11 spoke about with the 277 documents, all pre 9/11 documents. We
12 filed the log, we served the log, all we need is the formal
13 statement from them, as opposed to the informal one which they
14 want from us, that no privilege log is necessary, which is
15 probably the case. These are mere formalities and ministerial
16 matters, just as they are --

17 THE COURT: Sure. Judge Maas obviously decided that
18 there was sufficient question about the efforts to search for
19 certain documents that he decided. And this was back, I think,
20 in March of 2016 that certain defendants needed to certify that
21 they had behaved appropriately. I am not saying you are, but I
22 am now questioning whether or not a certification from the
23 plaintiffs is necessary.

24 Typically in litigation, lawyers who are officers of
25 the court make a representation to the court, they stand by it,

1 and I assume that it is truthful. If there is something you
2 think about the plaintiffs' informal representations to you
3 that is unsatisfactory or that you think leaves you with doubt,
4 you should bring it to my attention. But typically I don't
5 require a party to certify that they are completed with
6 discovery.

7 MR. SALERNO: Fair enough, your Honor. I guess
8 neither of us were clear on that. I have no problem whatsoever
9 with the certification that they are done. I don't know if
10 they have a problem with our certification that we are done.
11 They haven't expressed one really, except there was some
12 discussion of it just today. We don't have a problem with
13 that. If it is not necessary, then we don't want it.

14 THE COURT: Why don't I let you all continue this
15 conversation about whether the production is completed or not
16 or whether or not there is anything outstanding. I mean, I see
17 that the requirement for a certification -- at least in my
18 practice, I don't know what Judge Maas was thinking when he
19 issued those rulings -- in my practice it is because there is
20 some doubt about whether or not the producing party has been
21 adequate in his or her searching and there is a requirement or
22 a need for some sort of something more formal to rely upon. If
23 there is no reason, I wouldn't ordinarily require lawyers to
24 certify their production.

25 MR. SALERNO: Fair enough, your Honor.

1 THE COURT: Thank you. I think that addresses and
2 gives me some sense of where we are on discovery.

3 So we've got deadlines set for any of the
4 jurisdictional defendants and we are going to get some status
5 letters in the coming months with respect to the merits
6 defendants. If we think that there is a need for motion
7 practice, I am going to set deadlines for that motion practice.
8 They will be reasonable, but they will not be extended deep
9 into 2018. We will set deadlines as necessary.

10 If you reasonably anticipate motion practice, you can
11 put in your status letter that you do and propose dates. I
12 would prefer those dates to come on consent from both parties,
13 and to the extent you're asking for something beyond a 30-day
14 window to file a motion, I am going to want to hear why that is
15 necessary.

16 Let's turn to the deposition protocol. I think what
17 I am going to do, I've read the letters, I've looked over the
18 protocol, obviously. I don't think I need argument from
19 anyone, so I am going to tell you how I am going to rule, and
20 then I want to have a conversation about some of the
21 information that is missing, in my view, in this protocol.

22 The first issue is with respect to paragraph six.
23 There was a question about whether or not it would apply to
24 jurisdictional defendants. I don't think there is a basis for
25 Rule 26(a) disclosure requirements to apply to jurisdictional

1 defendants. Certainly in the course of that jurisdictional
2 discovery, if there is an appropriate interrogatory or
3 information is provided by defendants, witnesses will be
4 disclosed. But I don't think procedural Rule 26(a) is
5 implicated, and I think that the jurisdictional defendants have
6 raised an adequate explanation for why it would be unfair for
7 them to comply with Rule 26(a), given the posture of the case.

8 The next issue I flagged is an issue which you did not
9 flag. I just want to mention it. I don't necessarily need to
10 deal with it quite yet. It will go to this general issue of
11 when we are going to get these depositions taken.

12 I am concerned in paragraph 25, the parties propose
13 that notices for depositions that are going to take place in
14 the United States be provided within 21 days, and there is a
15 45-day deadline to schedule notices for depositions outside the
16 United States. I don't think that those sorts of deadlines are
17 necessary. Those seem excessive to me. I actually think, and
18 I am going to be ruling, that some of these depositions are
19 going to take place outside of the United States, potentially
20 many of them. Trying to schedule depositions, with all of the
21 moving parts that is inherent in this case, with 45 days'
22 notice, in my mind, is an impossibility and will only create
23 problems and disputes about when people are changing dates, and
24 then do we need to restart some 45-day clock. I don't
25 necessarily have dates that you should put into that, but I do

1 think that 21 days and 45-day system is too long.

2 With respect to paragraph 27, and as it deals with the
3 location of the defendants, I am certainly mindful that the
4 presumptive rule is that defendants are not required to appear
5 in the forum jurisdiction for purposes of the deposition. So I
6 reject the Plaintiffs' Executive Committee's proposal that all
7 depositions take place here in the forum.

8 I did read the Plaintiffs' Executive Committee,
9 setting forth all of their letter, setting forth all of the
10 factors that courts consider when deviating from that
11 presumptive rule. I find that they justify some limitations on
12 the location of deposition, but not requiring that all
13 depositions take place here. I think that the complexity
14 associated with scheduling these depositions and coordinating
15 them among various parties and interested actors, as well as
16 some of the unique issues that are raised by requiring
17 depositions to take place in Saudi Arabia, which is obviously a
18 defendant in this case, or in the United Arab Emirates, where
19 the defendant Dubai Islamic Bank has a major presence, I think
20 create real issues here. I reject the proposal from the
21 Defendants' Executive Committee that depositions occur in any
22 nation, including where a deponent lives or works.

23 I am going to authorize the depositions to take place
24 either in the forum jurisdiction or London, Paris, and Rome as
25 acceptable locations. I do think that the protocol should

1 provide that upon the agreement of the parties, based on the
2 convenience of the witness, a deposition may take place in some
3 location other than those four presumptive locales. It may be
4 that there is a Canadian citizen and everybody agrees that it
5 makes sense to take that deposition, for convenience of the
6 witness, in Canada, but if there can't be agreement, the
7 presumptive locations will be New York, London, Paris, and
8 Rome, and the New York jurisdiction doesn't carry any more
9 weight.

10 For those defendants, of whom I am assuming there are
11 many who are going to be coming from the Middle East, my
12 assumption is that many of those depositions are going to take
13 place in Western European cities.

14 MR. HAEFELE: Your Honor, Robert Haeefele. I am sorry
15 to interject here.

16 One thing I wanted to call your attention, it was
17 actually plaintiffs that I think proposed to do Paris as one of
18 the locations, it turns out I think Paris may be problematic
19 because I think that there is a blocking statute that might
20 prevent the depositions from taking place in Paris. If that is
21 an issue, then it probably wouldn't be an appropriate location
22 to have as a proper location for the depositions.

23 THE COURT: You said there is a blocking statute?

24 MR. HAEFELE: I think the blocking statute that would
25 forbid depositions American style, so to speak, from taking

1 place in Paris.

2 THE COURT: Yes.

3 MR. NASSAR: We have a couple questions on that. It
4 is in relation to both of my clients I represent, Muslim World
5 League and the International Islamic Relief Organization. Both
6 of them are in Saudi Arabia. Visa issues are going to be a
7 major concern for our clients, as well as many of the
8 prospective witnesses that plaintiffs are interested in. In
9 getting them to Western European countries is going to pose
10 quite a challenge, especially given the nature of this
11 litigation and what is alleged against them in particular.

12 Is this something we should write to you further on?

13 THE COURT: I'm happy to address these problems. I
14 don't want a problem without a solution.

15 One of the things I want to talk about is, it seems to
16 me today, if I forced you all to pick your depositions, you
17 should be able to do a pretty good job. And so what I reject
18 wholly in the protocol is this triggering date of May 2 as
19 being the day that you start to talk about depositions.

20 I want to have a conversation with you all about when
21 we can start identifying who is going to be deposed. Once we
22 identify who is going to be deposed, you may be in a better
23 position to say, my clients can very easily travel to Rome, or
24 my clients can very easily travel to, I don't know, Tunisia, I
25 don't know, some other country where everybody can agree there

1 is not a travel ban. I am not sure if Tunisia is one of them.
2 That would be appropriate.

3 I think countries where there is serious travel ban
4 issues are inappropriate. I think countries where women are
5 going to be under some sort of disability, for lack of a better
6 word, if we have female lawyers going to have some sort of
7 restrictions, those countries are not appropriate, in my view,
8 for depositions in this purpose.

9 MR. NASSAR: Sure. And on that point, in terms of
10 alternatives, we have navigated numerous other federal
11 litigations in the U.S., as well as the Cayman Islands.
12 Depositions in the kingdom, in Saudi Arabia where, for whatever
13 reason, maybe one side is not able to attend, but by video, by
14 video link, and if that is also an acceptable alternative as
15 well? That is something that we have done in numerous federal
16 courts in relation to Saudi Arabia, some of the challenges that
17 are poised by Saudi Arabian depositions.

18 THE COURT: Is that a case where Saudi Arabia was a
19 defendant?

20 MR. NASSAR: Saudi Arabian interests. I don't
21 represent Saudi Arabia, I represent two organizations, NGOs in
22 Saudi Arabia. Those cases included Saudi Arabian interests,
23 but not the kingdom itself.

24 THE COURT: Well, those are real concerns. Obviously
25 if somebody can't appear in London for a deposition, then that

1 makes no sense in ordering that deposition.

2 But I want to be clear that I am rejecting both
3 proposals from the parties that it will not be presumptively
4 here in New York and it will not be presumptively where the
5 witness lives or works. With some of the limitations that I
6 have just outlined, certain countries I think are not going to
7 be available. Whether or not, for instance, if we identify a
8 particular witness from your client who, for whatever reason,
9 it would be a significant hardship to travel or impossibility
10 to travel to a country that the Plaintiffs' Executive Committee
11 is prepared to travel to for purposes of the deposition, it may
12 be that the Plaintiffs' Executive Committee is comfortable
13 taking that deposition by video hook up with the person in
14 Saudi Arabia and the lawyers in New York.

15 I am repeating myself a little bit, but what I want to
16 make clear is that these conversations, I think, should be
17 happening now, because I think you know who is going to be
18 deposed, you have a sense of who you are going to be asking
19 for. We should be having these conversations now. That would
20 inform this protocol.

21 I think the problem with the protocol is that it is a
22 little bit in a vacuum without actually thinking about carrying
23 it out. It's got a lot of detail about the bells and whistles
24 of the depositions, but I think it is missing some of the hard
25 work about how many depositions are going to take place.

1 Both sides are going to leave the deposition phase of
2 this case without having deposing every single person they want
3 to depose. When are those depositions going to start taking
4 place, how much time do you have for those depositions; those
5 are the hard questions that we need to be asking now that I
6 didn't see in the protocol.

7 So I think I've been clear, at least with respect to
8 the locations, on what is not acceptable. Hopefully I have
9 resolved that dispute among the parties, and I'll pass it on to
10 you to have the conversation to create carve-outs for
11 situations where there are witnesses who, for whatever
12 political or legal reasons, are unable to travel to a country
13 that the Plaintiffs' Executive Committee thinks is appropriate.
14 And also maybe we scratch Paris, if Paris's civil system
15 creates too much complications as far as enforcing the federal
16 rules for these depositions.

17 Let me also talk, in paragraph 27 there is the issue
18 of former employees. Again, we have a presumptive rule that
19 I think is appropriate and correct, but in the unique
20 circumstances of this case, I think, needs to be modified in
21 part. Obviously it is correct that the defendant corporation
22 does not and should not have an obligation to produce former
23 employees for depositions. As a practical matter, however, it
24 may be that the corporate defendants are the only entities that
25 have any information about the whereabouts for witnesses that

1 the Plaintiffs' Executive Committee wishes to depose. I think
2 a compromise proposal is appropriate.

3 The defendant corporation should be providing upon
4 request, which may or may not have been made already, all of
5 the last-known contact information for any former employees.
6 To the extent the Plaintiffs' Executive Committee has
7 identified former employees that they intend to depose, you
8 should be providing those names now to the defendant
9 corporations and the corporation should be providing last-known
10 information.

11 Then the Plaintiffs' Executive Committee should take
12 reasonable efforts to serve a notice of deposition on that
13 person, and the burden is on the Plaintiffs' Executive to do
14 that. You should make that first effort. If you're
15 unsuccessful, I do think it is appropriate for the defendant
16 corporation to provide reasonable assistance.

17 To the extent that there is a contact or some way to
18 communicate, I think it is reasonable, given the length of time
19 that has passed since this event, given the issues related to
20 language, I think just the nature of this litigation in and of
21 itself, I think, is fair. And the difficulties of the court
22 enforcing its subpoena power in foreign jurisdictions, I think
23 it is reasonable to ask the defendants, after the plaintiffs
24 have exhausted their efforts, to undertake a reasonable effort
25 to make the witness, the former employee, available.

1 However, the burden will never shift to the defendants
2 to produce that witness, so the defendants have to make a
3 reasonable effort after the plaintiffs have done so. But if
4 ultimately that effort is unsuccessful, it will not be the
5 burden on the defendants to produce that employee.

6 MR. HAEFELE: Your Honor, may I address that for a
7 moment?

8 THE COURT: Sure.

9 MR. HAEFELE: My understanding is that the federal
10 rules reach a little beyond just whether the person is a former
11 employee or not. There is a term we use "managing agent" that
12 extends a little bit beyond. There are circumstances where the
13 case law has recognized the obligation of a defendant, a
14 corporation, to produce a former employee or a former, I should
15 say former, official or a person that speaks on behalf of the
16 corporation, a person who has an identity that is sympathetic
17 to the defendant corporation versus to the opposing side, the
18 questioning party.

19 I just want to make sure and determine whether or not
20 your ruling is intended to go to restrict that use of that term
21 "managing agent?"

22 THE COURT: I haven't looked at this specific issue
23 recently, but I have in the not-too-long distant past. My
24 understanding of the law is that the defendant corporation does
25 have an obligation to produces officer, directors, managing

1 agents, anyone who can bind the corporation that are current
2 employees. And so to the extent you're seeking depositions of
3 a president or director of WAMY, that would be the obligation
4 of WAMY to produce that person.

5 If you're asking about former directors, people who
6 once held a position of authority but have since left, I am not
7 sure that the law covers those people.

8 MR. HAEFELE: I could give you a few citations, and
9 maybe your Honor can look at them before you do the order?

10 THE COURT: Sure.

11 MR. HAEFELE: The few citations instances I have
12 located are Independent Products Corporation v. Loew's at
13 24 F.R.D. 19 (S.D.N.Y 1959); a Seventh Circuit decision,
14 O'Shea v. Jewel Tea Corporation, 233 F.2d 530 (7th Cir. 1956);
15 Petition of Manor Investment Corporation, 43 F.R.D. 299
16 (Southern District 1967); Libbey Glass v. Oneida Limited,
17 197 F.R.D. 342, that's a Northern District of Ohio from 1999;
18 and Tomingas v. Douglas Aircraft, 45 F.R.D. 94. I know it is a
19 Southern District case, but I don't have the year.

20 THE COURT: Thank you.

21 MR. KRY: Your Honor, if I can ask for clarification
22 on one. My understanding is that under the rules, a foreign
23 corporate defendant would not have any obligation, even for a
24 current employee, to produce somebody unless that person was a
25 managing agent officer or director.

1 Does your order with respect to former employees apply
2 only to former employees that we would have an obligation to
3 produce if they were still current, or was it intended to be
4 broader than that?

5 THE COURT: I guess I would reserve a ruling at this
6 time on that precise issue, but I would say that typically the
7 way parties operate is that a defendant corporation will make
8 available its employees. I think it may be that the obligation
9 legally is just as to managing agents and directors and the
10 like.

11 You start to get into ethical questions about whether
12 or not lawyers from opposing side can contact employees, and
13 there is all sorts of ethical case law about how low down the
14 food chain that employee needs to be before you don't have an
15 ethical problem. And I think in my experience, lawyers
16 typically simply agree that the company will produce all of its
17 employees that are called for deposition.

18 You may object to a particular witness for a
19 particular reason and have a conversation about that, but that
20 typically, in part, out of a courtesy to your own employees,
21 that corporations do produce their own employees regardless of
22 where they are on the hierarchy.

23 MR. COTTREAU: Your Honor, one quick thing. Steve
24 Cottreau for Dubai Islamic Bank.

25 With respect to the case law that you got from

1 Mr. Haefele we never had a chance to respond to because we had
2 a simultaneous exchange of briefs. As you're reading through
3 it, a lot of those cases involve former officers, directors,
4 and managing agents who were then demoted by the corporation of
5 a status of a former employee. A lot of those cases deal with
6 that ruse by those parties trying to get around having to
7 produce those people.

8 Also, there is a strand -- this is a very narrow
9 exception -- where the former officer, director, or managing
10 agent still is somehow under the control of the corporation or
11 still closely identified with that corporation that the courts
12 are essentially saying they are not former, at least in terms
13 of your ability to control them. A lot of those cases involve
14 employees that the corporation has been able to put up for
15 depositions in other cases and still be able to have their
16 cooperation.

17 I think it is a very narrow exception and maybe is
18 better off handled by you on a case-by-case basis if it ever
19 even comes up as an issue in the case.

20 THE COURT: Very well, thank you.

21 MR. HAEFELE: Your Honor, I would agree that is
22 exactly what the case law says. It is a case-by-case basis,
23 and we have no problem with looking at it on a case-by-case
24 basis, but a rule that says that we can't notice their
25 depositions and they cannot be produced by the corporation is

1 somewhat of an issue for us.

2 THE COURT: Why isn't the best practice then to --
3 again, this goes back to the point of starting this
4 conversation now -- if you identify 15 people from Dubai
5 Islamic Bank that you know you want to depose and ask counsel,
6 will you produce these people, and he'll say yes to this one,
7 no to that one, yes to this one, no to that one. And then you
8 have a meet-and-confer on the noes, and raise the issue to me
9 at that point rather than legislate, at this point in the
10 protocol.

11 It may be more productive to have a general rule that,
12 generally speaking, former low-level employees are not under
13 the control of the corporation, but that the parties will work
14 cooperatively to identify people to be deposed.

15 Look, this litigation is contentious because of the
16 nature of the claims. It seems to me that the lawyers can do
17 their part by making this sort of issue not contentious. My
18 recommendation would be that we settle on some very broad
19 terms, some sort of best practices, but on a case-by-case basis
20 because each will be unique, because it may be that one witness
21 truly is a low-level former janitor who maybe heard something
22 and you want to depose that person, or it may be that the
23 person really still is making the major decisions for the
24 corporation, even though they are not technically not on the
25 letterhead.

1 MR. HAEFELE: I think one of the circumstances that we
2 can think of actually runs quite similar to what Mr. Cottreau
3 indicated wasn't the circumstance here, but it is that
4 situation where someone was a fairly high-ranking official
5 with one of the organizations and continued to be with the
6 organization for years. The defendants kept getting extensions
7 to their document production, and toward the end of that
8 process, after years of being in the litigation and after the
9 motions to dismiss were decided, then suddenly they said the
10 official becomes a former official at the entity. If we had
11 fast-tracked some of the discovery processes, we may have had
12 that person. We may or may not, depends on whether or not he
13 was released as a result of suddenly becoming available for
14 depositions.

15 What I would want to make sure isn't the circumstance
16 is that the defendants aren't getting the benefit of releasing
17 individuals who are defendants, releasing themselves from the
18 entity so that they can then have the benefit of avoiding
19 discovery on that.

20 THE COURT: Right. This seems like a perfect example
21 of a situation where a conversation with counsel may or may not
22 be productive. Then you can bring specific facts to me and I
23 can make a ruling. And obviously if I rule that the person
24 should be considered a current employee of the company and
25 should be produced by the company and the company refuses, then

1 you'll make the appropriate application at that time.

2 MR. HAEFELE: Thank you.

3 THE COURT: I am going to skip for one moment
4 paragraph 31 and go back to it. I think that is the big one,
5 although it is little on the protocol.

6 The Friday issue should not be an issue. If there is
7 a religious barrier to parties appearing at a deposition
8 because it is scheduled for a Friday, then the parties should
9 make changes. People can take depositions Monday through
10 Thursday, if that is what needs to happen here, but I am not
11 going to let religious observance be sacrificed for
12 depositions.

13 With respect to paragraph 35, which has to do with
14 depositions to preserve testimony, I understand that the
15 plaintiffs' Executive Committee wants to exchange Rule 26
16 disclosures, a proffer of the witness' testimony, and a copy of
17 each of the documents that the party that noticed the
18 preservation deposition anticipates using.

19 I am not going to impose Rule 26(a) disclosure
20 obligations for these witnesses. It wouldn't otherwise be
21 imposed for the purpose of this particular exercise. Obviously
22 if the witness is under 26(a) obligations already, then that
23 person should be complying with those obligations, but I am not
24 going to impose them as additional obligations for somebody who
25 the parties seek to preserve the testimony.

1 I do think it is appropriate that any party that is
2 going to be testifying for preservation purposes should be
3 obligated to proffer the subject matter of the testimony. But
4 something more than that, I think the general substance of the
5 anticipated testimony is fair and reasonable. I am considering
6 how this would play out if it was just simply the person
7 testifying at trial, and I think we all agree that trial by
8 ambush is not how we try cases anymore or ever.

9 The cross-examining lawyer, as it were, would
10 certainly know the purpose of the person's testimony and some
11 sense about what the person is going to testify to. I think a
12 proffer is appropriate in advance of that deposition.

13 With respect to the issue of identifying exhibits, I
14 don't think there is a basis for that obligation. I'll note
15 that the Defendants' Executive Committee has expressed a
16 willingness to have a mutual exchange of exhibits, and so if
17 the Plaintiffs' Executive Committee thinks that it is
18 sufficiently important that they have the exhibits that the
19 attorney who noticed the deposition intends to use, it should
20 be a mutual exchange. Otherwise, I am not going to require
21 that there be an exchange of the anticipated exhibits in
22 advance of that deposition.

23 A minor point, paragraph 39, which is letters to me
24 about deposition scheduling. I think three pages is more than
25 enough. You identified five pages.

1 Paragraph 73, the duration of depositions, I
2 appreciate that this is a complex litigation and that there is
3 significant interest in the discovery of the truth here both by
4 the interested parties, the plaintiffs, all of the parties in
5 the case, as well as the public, but I don't think there is a
6 need to lift the seven-hour presumptive rule for depositions.
7 The parties have proposed, or I think the Defendants' Executive
8 Committee has proposed, that in certain instances the parties
9 can agree to a deposition that would last ten hours if there is
10 a good faith basis for believing that the deposition was
11 sufficiently complex. But that should be the exception, not
12 the rule, otherwise, I am imposing a seven-hour presumptive
13 rule per side.

14 I know in other portions of the protocol you discussed
15 having multiple people ask questions even from the same side.
16 That seven hours would apply to each side, meaning the
17 plaintiffs, however that is divided up, would get seven hours,
18 and the defendants, however that is divided up, would get seven
19 hours.

20 With respect to the use of an interpreter, I think an
21 additional half-time for that is adequate. You will all get
22 excellent interpreters who can do something pretty close to
23 realtime interpretation. We obviously have interpreters here
24 all the time here, particularly in criminal matters. They
25 basically work at realtime. I think an additional half-time is

1 adequate for any deposition where an interpreter is
2 contemplated.

3 Lastly is paragraph 89, which I think has been
4 resolved. This was the attorney consultation provision. I
5 understand that the Plaintiffs' Executive Committee ultimately
6 proposed a more modest amendment, which I think is reasonable,
7 simply an admonition that the attorney-client communication
8 should be kept to a minimum and that communication shouldn't be
9 used to coach the witness or in any way sort of encourage or
10 shape the witness's testimony. I think we can all agree to
11 that. If we want to add that as part of the protocol, that
12 seems fine by me.

13 So the paragraph that I set aside for further
14 discussion is paragraph 31. That is the paragraph that says
15 that on May 2, which is the date proposed in paragraph six for
16 the amended witness statements, witness disclosure, that that
17 would trigger the parties' conversation about numbers of
18 depositions. I don't think we need to wait until that point in
19 time. I've been gaming out the next couple months on this
20 case, and I have reversed my initial instinct, which was that
21 the March 2 deadline was too far in the distant future. To the
22 extent I assume that the parties have made Rule 26 disclosures,
23 those should be done on a rolling basis. I think it would
24 probably be helpful to have an additional maybe interim
25 deadline of the end of the year, December 31, but I appreciate

1 that there is going to be document production, including some
2 that won't be completed until the end of this month and fully
3 reviewed probably for a another couple months. I understand
4 that there may be some delays that would make the March 2
5 deadline reasonable. That deadline stays. I do think there
6 should be an interim production before then.

7 But what I don't think we need to do is wait until
8 that moment in time to start talking about deposition numbers.
9 I actually have no sense from the parties, nothing has been
10 shared with me to give me a sense of how many depositions we
11 are talking about here. In actuality, there aren't that many
12 defendants. I don't know whether or not there has been any
13 discussion about how many witnesses per defendant would be
14 called upon. I think that that is a conversation that the
15 parties are competent to have at this time, and I don't want to
16 wait until March for you all to start that conversation, only
17 to spend a month having meet-and-confer, only to disagree and
18 then come to me, and now I am not ruling on the number of
19 depositions until June.

20 It seems to me that this is a conversation that, if it
21 hasn't already started happening, it should happen. I'm happy
22 to hear from the parties about what they think is the best way
23 to proceed, but I am inclined to secure the number of
24 depositions that are going to be authorized under this protocol
25 in the near term, not in March, so that the parties can be in

1 a position that they can start taking depositions this spring,
2 which I think is a reasonable position for the parties to be
3 in.

4 Maybe I'll start with the Plaintiffs' Executive
5 Committee. Have you started either an internal conversation or
6 a bilateral conversation about the number of depositions you
7 are anticipating?

8 MR. CARTER: Your Honor, I think the short answer is
9 yes. We obviously have a fairly good sense at least certain
10 of the witnesses we want to depose. Part of the reason for
11 deferring a very specific conversation about the universe was
12 that we did have these document productions coming in,
13 identifying new witnesses that may affect who we choose to
14 depose. We may find someone who can answer a universe of
15 questions that alleviates the need for three other depositions.
16 We were focused on that.

17 There are certainly a number of depositions that we
18 can say right now, you know, these are folks that we want to
19 depose and intend to depose. We have a bit of a reservation
20 doing the depositions before the documents come in because of
21 the potential that new things come up that require us to go
22 back again and revisit the same deposition. But we could, on a
23 rolling basis, identify witnesses for the defendants.

24 THE COURT: I'll tell you how I handle complex cases.
25 Typically I will hear from the parties with a magic number; I

1 think I need to take this many depositions from this party and
2 this many from this party. And maybe the parties reach
3 agreement. Hopefully they do. Sometimes they come to me and
4 say, on the pure number, we can't reach agreement.

5 At that point, what I have done is have the parties
6 justify why they need to take, I'll keep simple, ten
7 depositions. And they'll identify the ten witnesses they think
8 are critical, and they will give me basically why they think
9 those witnesses are critical. And I'll hear from the other
10 side as to why they are duplicative or they don't have relative
11 information. It would be a waste of everybody's time.

12 Then often what I will do is simply rule that instead
13 of ten, you get eight, and you can figure it out then. But I
14 think that process needs to start now. Even if we don't start
15 identifying specific individuals, I think we can start getting
16 a sense of how many we think is reasonable.

17 To the point about issuing a ruling on the protocol, I
18 am not inclined at this point to sign off on this protocol. I
19 think I have given you some instructions on ways to go back to
20 it. This, I think, is a great foundation, but what I would
21 like to do, because I think the most important thing in this
22 protocol is how many depositions people are going to take and
23 some deadlines as to when those are going to happen, what I
24 would like to do is have the parties go back and start having
25 an internal conversation, and then a bilateral conversation

1 about the number of depositions, and when they think those
2 depositions can reasonably start. It seems to me, based on my
3 gaming out the system and the motions to compel that I
4 anticipate and the responses to those motions to compel, that
5 depositions should be able to start sometime in April or May.
6 I think that that is reasonable.

7 And so what I would like to do now is start having you
8 do the hard work of thinking about who do you actually want to
9 depose. How many people is it? Is it 100? Is it 50? Is it
10 15? I don't know. Having those conversations with everybody
11 and then presenting either a joint proposal to me or competing
12 views, and then we can start talking about how to shave the
13 number to make it more equitable.

14 I can't tell, Mr. Carter, if you're waiting to say
15 something.

16 MR. CARTER: Mr. Haefele is writing me a note.

17 THE COURT: OK.

18 MR. CARTER: Your Honor, I think we can have that
19 conversation and we can advance the ball in terms of
20 identifying who, and some of that is going to be impacted about
21 who is available and the circumstances under which they can be
22 made available.

23 Yes, we can start that conversation for sure.

24 THE COURT: I am going to set a separate deadline for
25 us to revisit this issue so that we can keep this conversation

1 moving.

2 The last set of discovery, so what you're still
3 waiting on is the WAMY discovery, and that should be provided
4 by the end of September. I understand that there may be
5 motions to compel, there may be gaps. You'll get at least
6 their first batch or their presumptive completion, I should
7 say, by the end of September.

8 What if we set November 3 as a deadline for a letter
9 to be submitted with the parties' proposal. Maybe what we
10 should get then is the revised protocol based on my rulings
11 today, and it should include in that revised protocol, the
12 parties' proposal with respect to the number of depositions
13 that are going to be taken, and a reasonable date to start
14 those depositions and a reasonable date to conclude those
15 depositions.

16 I am not foolish enough to think that you all are
17 going to agree on those pieces of information, so you can do
18 the same thing that you did with respect to the initial
19 protocol with competing arguments as to why one position or
20 another is appropriate.

21 MR. CARTER: Your Honor, can I just touch upon the
22 November 3 date?

23 THE COURT: Sure.

24 MR. CARTER: The oppositions to Saudi Arabia's renewed
25 motion to dismiss are due on November 2.

1 THE COURT: You don't want this due back to back?

2 MR. CARTER: I have a feeling we're all going to be --

3 THE COURT: Drunk probably.

4 MR. CARTER: -- dealing with a deeper issue.

5 I didn't say it, your Honor. If we can maybe move
6 that date just a bit?

7 THE COURT: What if I give you to November 15?

8 MR. CARTER: That would be fine, your Honor. Thank
9 you.

10 THE COURT: Again, the number of depositions, to the
11 extent you all know better than I do if there is going to be
12 disputes about specific witnesses that are going to be called
13 upon, I'm happy to hear about that on the 15th as well, if you
14 think that is ripe for resolution.

15 That issue, I feel like, we can set aside if we need
16 to, but I would like to start getting some limits on the number
17 of depositions. So what I do want to at least develop is the
18 number of depositions that each side is going to be entitled
19 to, when those depositions are going to begin, when those
20 depositions are going to end. And I can get a revised protocol
21 based on rulings today with a goal of getting a protocol so
22 ordered on the docket by the end of the year that has firm
23 dates and real expectations for the parties to move forward
24 with depositions. I think that that is reasonable.

25 I think that that addresses everything. The other

1 housekeeping thing I just want to reference again, I won't
2 quote Mark Twain, but I think you all can edit your letters
3 more. My individual rules permit only five-page letters, and
4 there is really no reason for these letters to be longer than
5 five pages. I will remind you of my individual rules. If
6 there is a reason why you need to seek relief from that
7 limitation, you may do so, but five pages is really enough for
8 you to get your thoughts to me.

9 This is a case where I am probably going to be having
10 plenty of conferences. I'll always give you the opportunity to
11 be heard. If you feel like you're not able to fully express
12 yourselves in your letter, I'll give you an opportunity to do
13 so orally. For my own docket management, five pages is
14 adequate from everybody.

15 MR. CARTER: Your Honor, just as a point of
16 clarification, a lot of the motions to compel have been done
17 via letter, and we had, I think, some page limits for motions
18 to compel by letter.

19 Would that apply as well to those?

20 THE COURT: I think what I was going to do was issue
21 an order with some dates, and I was going to incorporate in
22 that sort of a little bit of instructions about page limits and
23 whether it should be by letter motion or letter motion.

24 I know Judge Maas preferred to have everything by
25 letter motion. I actually may prefer it by proper motion, so I

1 might have it come more as a brief than a letter.

2 MR. CARTER: Thank you, your Honor.

3 THE COURT: But I'll put that in the order.

4 Anything further from any side?

5 Great. I will hear from you all in the coming weeks
6 and months.

7 Be well.

8 (Adjourned)